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CHARLES ELMORE CROPLEY

No. 274

IN THE

Supreme Court of the United States

October Term, 1941

—o—

MASSMAN CONSTRUCTION COMPANY.....Petitioner

vs.

HARRY W. BASSETT,
Deputy Commissioner, etc., et al.....Respondents

—o—

On Petition for Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

—o—

PETITIONER'S REPLY BRIEF

—o—

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ARGUMENT

I

The various arguments presented in the brief of respondent, Harry W. Bassett, have, we think, been sufficiently dealt with in our original brief in support of the petition for certiorari. The only exception to this statement is found in the argument on point three of Bassett's brief being contained on pages seven and eight. Under this point Bassett contends that the provisions contained in Section 921-B, Title 33 U. S. Code in regard to the place where an action of this sort must be brought are jurisdictional in the sense that they relate to the subject matter jurisdiction of the action and hence cannot be waived. This

argument is based upon the provisions of the subsequent subparagraph Section 921-D which reads.

> "Proceedings for suspending, setting aside or enforcing a compensation award * * * shall not be instituted otherwise then as provided in this Section and in Section 918 of this Chapter."

Counsel for the respondent interprets this last quoted paragraph as meaning (a) that such an action shall not be brought at a place or at a time other than the place and the time indicated in Sections 918—921-B and, (b) that no court shall have jurisdiction to hear and determine an action unless these venue and time requirements have all been met.

II

Note particularly that Section 921-D does not say all of these things in express words, they must be read into it by interpretation. If this were the only thing that the Section could mean and if it could have been enacted for the purpose of making venue and limitation provisions of the act jurisdictional and for no other purpose the construction contended for would be correct, but it is submitted that if another interpretation is possible it should be accepted and that this is true because, had Congress intended the drastic results which would follow from the interpretation of the law argued for by respondent, it could and would have used more definite and expressive language.

It is submitted that in enacting Section 921-B Congress meant this and only this: An award of a deputy commissioner cannot be set aside, suspended, or modified by a ruling of the whole industrial commission, nor can it be interfered with by the courts through mandamus, certiorari, prohibition, or any other of the ordinary legal processes, nor shall it be vulnerable to a collateral attack.

In the first place it is to be noted that when this law was

adopted most of the States had compensation acts. That in many of these instances an award of a deputy commisioner, arbitrator or referee was subject to review before the whole commission. An examination of the congressional record cited in our principal brief will show that there was considerable argument as to whether such procedure should be provided for in this law and that a decision was definitely made against it by Congress. In the second place in the absence of a provision like Section 921-B it would have been argued that the award of the commission was not a judgment and hence was susceptible to collateral attack in the courts in a large number of different proceedings. Congress, therefore, enacted the Section above quoted for the purpose of saying that only one type of proceeding should be available to review a compensation award, to-wit: the Bill in Equity provided for in the preceding sub-sections and likewise that only one type of proceeding should be available to enforce the compensation award thus precluding the various sorts of suits or enforcement which might otherwise been brought.

An examination of the cases cited in the Basset brief shows that they support the contention we are making rather than that made by the respondent. Three of these cases Pillsbury vs. Alaska Packers Association, 85 Fed. (2d) 758; Associated Indemnity Corporation vs. Marshall, 71 Fed. (2d) 235 and Associated Indemnity Corporation vs. Marshall 71 Fed. (2d) 420 are not in point at all on the facts. They are cases in which claims were filed too late and hence were barred by the limitation provisions of Section 921. They do not involve any discussion of waiver because in each instance a proper motion to dismiss on the ground the statute of limitations had run was duly filed in the lower court. The case of Mille vs. McManigal, 69 Fed. (2d) 644 holds that the action of the commissioner in making an award or refusing to make one cannot be controlled by the court through the writ of mandamus and the case of Swofford vs. International Mercantile, 133 Fed. (2d) 179

holds that the award cannot be attacked in a proceeding to recover back money paid thereunder. Thus the last two of these cases are directly in line in the interpretation of Section 921-D which we have given. Not one of them intimates that Section 921-D is to be interpreted so as to make the venue or limitation provisions of Section 921-B jurisdictional in the sense of prohibiting their waiver by the parties. Such a holding could not have been made on the facts of any of these cases and there is not even any dictum to be found in them supporting the construction of the Section placed upon it by respondent.

III

Finally Section 921-D cannot apply in such a manner as to take away the jurisdiction of the courts to declare void a compensation award where the deputy commissioner making the same acted entirely outside his jurisdiction and authority under the constitution and the act. For example Section 921 makes the finding of facts by a deputy commissioner final and binding on the courts if it is supported by any evidence. In other words under the section such a finding has the force and effect of a jury verdict, but this court has said in Crowell vs. Benson, 285 U. S. 22 that Congress could not thus limit the courts if the question involved was that of the jurisdiction of the deputy commissioner to hear and determine the case. If this is true it necessarily follows that Congress cannot limit the jurisdiction of the courts by imposing mandatory venue provisions where that jurisdiction is being exercised to determine whether or not the deputy commissioner had any power to determine the issues before him at all. This principle is expressly recognized in the very cases cited by respondent and above discussed. Now that is what the petitioner sought to do in this case and the only thing it is seeking to do. The petitioner is asking to have the court determine whether or not respondent Bassett had jurisdiction to determine this claim. Certainly the Federal Courts have an inherent right to prevent a federal

officer from attempting to take jurisdiction over a matter of purely cognizance apart from the provisions of the compensation law itself and that act could not deprive the courts of their power in that regard.

We cannot believe that respondent is wholly sincere in his contention on this matter for he proceeds to argue that the whole question is not of any importance in any event and he bases this proposition upon the alleged fact that the issue has not before been raised. The court can readily see that because if the shifting channel of the Mississippi River and some of the other similar rivers the matter has now become of vital importance. That it will be very difficult to determine in which district review proceedings are to be brought where the accident involved occurred upon such a river as the Mississippi and that in many such cases the question of waiver of the venue provision of the act will become of vital importance. It is, therefore, again submitted that this question ought to be ruled upon by this court after a full hearing. We again refer to the fact that other contentions raised by the respondent in his brief have we think been answered in the original brief of petitioner herein and again respectfully request the issuance of certiorari and the determination of this cause by this court.

Respectfuly submitted,

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